

### DETAILED ACTION

1. This action is responsive to the amendment filed on 03/22/2010. Claims 50, 53, 56, 57, 59-62, and 65-75 are pending. Claims 50, 53, 59, and 62 are independent. Claims 1-49, 51, 52, 54, 55, 58, 63, and 64 are cancelled. Claims 68-75 are newly added.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 50, 53, 56, 57, 59-62, and 65-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thal (US Pub. No.: 2002/0103493) in view of Middleman et al (US Pat. No. 5,749,879) and Mollenauer et al (US Pat. No.: 6,077,277).

In regard to Claims 50, 53, 56, 57, 59-62, and 65-75, Thal discloses a surgical device comprising: a cylindrical body (22) having a lumen; a first jaw (14) and a second jaw (18) connected to the body; wherein one of the jaws (14) movable relative to the other and having an opening (Fig. 7), which is substantially transverse to a long axis of the moveable jaw (Fig. 7); and a handle (32).

Thal does not appear to disclose an elongated member positioned substantially within and slideable through the lumen of the body for carrying a suture; wherein the distal portion comprises a flexible, closed-loop eyelet.

However, Middleman et al teaches a suture apparatus comprising an elongated suture grasper member (**14**) positioned substantially within and slideable through the lumen of a cylindrical body for capturing a suture (Figs. 1-7a and 1-8a); and a suture (**36**) wherein the elongated member comprises superelastic puncturing distal portion; wherein the distal portion of the elongated member is in a stressed configuration substantially contained within the lumen of the cylindrical body in a first position and in an unstressed configuration in a second position (Figs. 1-7a, 1-8a and 1-8b); and wherein the elongated member is substantially non-hollow (Figs. 1-7a, 1-8a and 1-8b).

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In addition, Mollenauer et al teaches an elongated suture grasping member comprising a flexible, closed-loop eyelet (9).

Thal, Middleman et al, and Mollenauer et al are analogous art because they are from the same field of endeavor.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Thal and Middleman et al before him or her, to modify the suture apparatus of Thal to include an elongated member made of superelastic material as taught by Middleman and a suture grasping member comprising a flexible, closed-loop eyelet as taught by Mollenauer et al.

The suggestion/motivation for including an elongated member made of superelastic material would have been to automatically grasp the suture during a surgical procedure and without inserting the elongate suture grasping member/needle in a different insertion. The suggestion/motivation for include a flexible, closed-loop eyelet in the distal portion of a suture grasping member would have been to retain the suture in place during the surgical procedure to easily manipulate suture for subsequent/additional surgical procedures, such as snaring the unnecessary portion of the suture.

Therefore, it would have been obvious to combine Middleman et al, and Mollenauer et al with Thal to obtain the invention as specified in the instant claims.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 50, 53, 56, 57, 59-62, and 65-75 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JING OU whose telephone number is (571)270-5036. The examiner can normally be reached on M-F 7:30am - 5:00pm, Alternative Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Uyen (Jackie) T Ho can be reached on (571)272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/J. O./

Examiner, Art Unit 3773

06/10/2010

/(Jackie) Tan-Uyen T. Ho/

Supervisory Patent Examiner, Art Unit 3773